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SIGMAGRAFT, INC. dba
SIGMAGRAFT BIOMATERIALS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

M. PAPADOPOULOS DENTAL
CORP. dba VILLAGE FAMILY
DENTAL OFFICE, individually, and
on behalf of others similarly situated,

Plaintiffs,

vs.

SIGMAGRAFT, INC. dba
SIGMAGRAFT BIOMATERIALS ,
Defendant.

CASE NO. 8:19-cv-232 DOC (DFMx)

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Discovery Cutoff: December 13, 2019
Motion Cutoff: January 27, 2020
Pretrial Conference: March 2, 2020
Trial: March 17, 2020

IT IS HEREBY STIPULATED by and between the parties, through their
respective counsel of record, subject to the approval of this Honorable Court, that in
order to facilitate the exchange of information and documents which may be subject
to confidentiality limitations on disclosure due to federal laws, state laws, and
privacy rights, the Parties stipulate as follows:

1. In this Stipulation and Protective Order, the words set forth below shall
have the following meanings:

1 a. "Proceeding" means the above-entitled proceeding (8:19-cv-
2 232).

3 b. "Court" means the Hon. David O. Carter, or any other judge to
4 which this Proceeding may be assigned, including Court staff participating in such
5 proceedings.

6 c. "Confidential" means any information which is in the possession
7 of a Designating Party who believes in good faith that such information is entitled to
8 confidential treatment under applicable law.

9 d. "Confidential Materials" means any Documents, Testimony or
10 Information as defined below designated as "Confidential" pursuant to the
11 provisions of this Stipulation and Protective Order.

12 e. "Designating Party" means the Party that designates Materials as
13 "Confidential."

14 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal,
15 divulge, give, or make available Confidential Materials, or any part thereof, or any
16 information contained therein.

17 g. "Documents" means (i) any "Writing," "Original," and
18 "Duplicate" as those terms are defined by California Evidence Code Sections 250,
19 255, and 260, which have been produced in discovery in this Proceeding by any
20 person, and (ii) any copies, reproductions, or summaries of all or any part of the
21 foregoing.

22 h. "Information" means the content of Documents or Testimony.

23 i. "Testimony" means all depositions, declarations or other
24 testimony taken or used in this Proceeding.

25 2. The Designating Party shall have the right to designate as
26 "Confidential" any Documents, Testimony or Information that the Designating Party
27 in good faith believes to
28 contain non-public information that is entitled to confidential treatment under

1 applicable law.

2 3. The entry of this Stipulation and Protective Order does not alter, waive,
3 modify, or abridge any right, privilege or protection otherwise available to any Party
4 with respect to the discovery of matters, including but not limited to any Party's
5 right to assert the attorney-client privilege, the attorney work product doctrine, or
6 other privileges, or any Party's right to contest any such assertion.

7 4. Any Documents, Testimony or Information to be designated as
8 "Confidential" must be clearly so designated before the Document, Testimony or
9 Information is Disclosed or produced. The parties may agree that the case name and
10 number are to be part of the "Confidential" designation. The "Confidential"
11 designation should not obscure or interfere with the legibility of the designated
12 Information.

13 a. For Documents (apart from transcripts of depositions or other
14 pretrial or trial proceedings), the Designating Party must affix the legend
15 "Confidential" on each page of any Document containing such designated
16 Confidential Material.

17 b. For Testimony given in depositions the Designating Party may
18 either:

19 i. identify on the record, before the close of the deposition,
20 all "Confidential" Testimony, by specifying all portions of the Testimony that
21 qualify as "Confidential;" or

22 ii. designate the entirety of the Testimony at the deposition as
23 "Confidential" (before the deposition is concluded) with the right to identify more
24 specific portions of the Testimony as to which protection is sought within thirty (30)
25 days following receipt of the deposition transcript. In circumstances where portions
26 of the deposition Testimony are designated for protection, the transcript pages
27 containing "Confidential" Information may be separately bound by the court
28 reporter, who must affix to the top of each page the legend "Confidential," as

1 instructed by the Designating Party.

2 c. For Information produced in some form other than Documents,
3 and for any other tangible items, including, without limitation, compact discs or
4 DVDs, the Designating Party must affix in a prominent place on the exterior of the
5 container or containers in which the Information or item is stored the legend
6 "Confidential." If only portions of the Information or item warrant protection, the
7 Designating Party, to the extent practicable, shall identify the "Confidential"
8 portions.

9 5. The inadvertent production by any of the undersigned Parties or non-
10 Parties to the Proceedings of any Document, Testimony or Information during
11 discovery in this Proceeding without a "Confidential" designation, shall be without
12 prejudice to any claim that such item is "Confidential" and such Party shall not be
13 held to have waived any rights by such inadvertent production. In the event that any
14 Document, Testimony or Information that is subject to a "Confidential" designation
15 is inadvertently produced without such designation, the Party that inadvertently
16 produced the document shall give written notice of such inadvertent production
17 within twenty (20) days of discovery of the inadvertent production, together with a
18 further copy of the subject Document, Testimony or Information designated as
19 "Confidential" (the "Inadvertent Production Notice"). Upon receipt of such
20 Inadvertent Production Notice, the Party that received the inadvertently produced
21 Document, Testimony or Information shall promptly destroy the inadvertently
22 produced Document, Testimony or Information and all copies thereof, or, at the
23 expense of the producing Party, return such together with all copies of such
24 Document, Testimony or Information to counsel for the producing Party and shall
25 retain only the designated Confidential Materials. Should the receiving Party choose
26 to destroy such inadvertently produced Document, Testimony or Information, the
27 receiving Party shall notify the producing Party in writing of such destruction within
28 ten (10) days of receipt of written notice of the inadvertent production. This

1 provision is not intended to apply to any inadvertent production of any Information
2 protected by attorney-client or work product privileges. In the event that this
3 provision conflicts with any applicable law regarding waiver of confidentiality
4 through the inadvertent production of Documents, Testimony or Information, such
5 law shall govern.

6 6. In the event that counsel for a Party receiving Documents, Testimony
7 or Information in discovery designated as “Confidential” objects to such designation
8 with respect to any or all of such items, said counsel shall advise counsel for the
9 Designating Party, in writing, of such objections, the specific Documents,
10 Testimony or Information to which each objection pertains, and the specific reasons
11 and support for such objections (the “Designation Objections”.) Counsel for the
12 Designating Party shall have thirty (30) days from receipt of the written Designation
13 Objections to either (a) agree in writing to de-designate Documents, Testimony or
14 Information pursuant to any or all of the Designation Objections and/or (b) file a
15 motion with the Court seeking to uphold any or all designations on Documents,
16 Testimony or Information addressed by the Designation Objections (the
17 “Designation Motion”). Pending a resolution of the Designation Motion by the
18 Court, any and all existing designations on the Documents, Testimony or
19 Information at issue in such Motion shall remain in place. The Designating Party
20 shall have the burden on any Designation Motion of establishing the applicability of
21 its “Confidential” designation. In the event that the Designation Objections are
22 neither timely agreed to nor timely addressed in the Designation Motion, then such
23 Documents, Testimony or Information shall be de-designated in accordance with the
24 Designation Objection applicable to such material.

25 7. Access to and/or Disclosure of Confidential Materials designated as
26 “Confidential” shall be permitted only to the following persons:

- 27 a. the Court;
- 28 b. (1) Attorneys of record in the Proceedings and their affiliated

1 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who
2 are actively involved in the Proceedings and are not employees of any Party. (2) In-
3 house counsel to the undersigned Parties and the paralegal, clerical and secretarial
4 staff employed by such counsel. Provided, however, that each non-lawyer given
5 access to Confidential Materials shall be advised that such Materials are being
6 Disclosed pursuant to, and are
7 subject to, the terms of this Stipulation and Protective Order and that they may not
8 be Disclosed other than pursuant to its terms;

9 c. those officers, directors, partners, members, employees and
10 agents of all non-designating Parties that counsel for such Parties deems necessary
11 to aid counsel in the prosecution and defense of this Proceeding; provided, however,
12 that prior to the Disclosure of Confidential Materials to any such officer, director,
13 partner, member, employee or agent, counsel for the Party making the Disclosure
14 shall deliver a copy of this Stipulation and Protective Order to such person, shall
15 explain that such person is bound to follow the terms of such Order, and shall secure
16 the signature of such person on a statement in the form attached hereto as Exhibit A;

17 d. court reporters in this Proceeding (whether at depositions,
18 hearings, or any other proceeding);

19 e. any deposition, trial or hearing witness in the Proceeding who
20 previously has had access to the Confidential Materials, or who is currently or was
21 previously an officer, director, partner, member, employee or agent of an entity that
22 has had access to the Confidential Materials;

23 f. any deposition or non-trial hearing witness in the Proceeding
24 who previously did not have access to the Confidential Materials; provided,
25 however, that each such witness given access to Confidential Materials shall be
26 advised that such Materials are being Disclosed pursuant to, and are subject to, the
27 terms of this Stipulation and Protective Order and that they may not be Disclosed
28 other than pursuant to its terms;

1 g. mock jury participants, provided, however, that prior to the
2 Disclosure of Confidential Materials to any such mock jury participant, counsel for
3 the Party making the Disclosure shall deliver a copy of this Stipulation and
4 Protective Order to such person, shall explain that such person is bound to follow
5 the terms of such Order, and shall secure the signature of such person on a statement
6 in the form attached hereto as Exhibit A.

7 h. outside experts or expert consultants consulted by the
8 undersigned Parties or their counsel in connection with the Proceeding, whether or
9 not retained to testify at any oral hearing; provided, however, that prior to the
10 Disclosure of Confidential Materials to any such expert or expert consultant, counsel
11 for the Party making the Disclosure shall deliver a copy of this Stipulation and
12 Protective Order to such person, shall explain its terms to such person, and shall
13 secure the signature of such person on a statement in the form attached hereto as
14 Exhibit A. It shall be the obligation of counsel, upon learning of any breach or
15 threatened breach of this Stipulation and Protective Order by any such expert or
16 expert consultant, to promptly notify counsel for the Designating Party of such
17 breach or threatened breach; and

18 i. any other person that the Designating Party agrees to in writing.

19 8. Confidential Materials shall be used by the persons receiving them only
20 for the purposes of preparing for, conducting, participating in the conduct of, and/or
21 prosecuting and/or defending the Proceeding, and not for any business or other
22 purpose whatsoever.

23 9. Any Party to the Proceeding (or other person subject to the terms of this
24 Stipulation and Protective Order) may ask the Court, after appropriate notice to the
25 other Parties to the Proceeding, to modify or grant relief from any provision of this
26 Stipulation and Protective Order.

27 10. Entering into, agreeing to, and/or complying with the terms of this
28 Stipulation and Protective Order shall not:

1 a. operate as an admission by any person that any particular
2 Document, Testimony or Information marked "Confidential" contains or reflects
3 trade secrets, proprietary, confidential or competitively sensitive business,
4 commercial, financial or personal information; or

5 b. prejudice in any way the right of any Party (or any other person
6 subject to the terms of this Stipulation and Protective Order):

7 i. to seek a determination by the Court of whether any
8 particular Confidential Material should be subject to protection as "Confidential"
9 under the terms of this Stipulation and Protective Order; or

10 ii. to seek relief from the Court on appropriate notice to all
11 other Parties to the Proceeding from any provision(s) of this Stipulation and
12 Protective Order, either generally or as to any particular Document, Material or
13 Information.

14 11. Any Party to the Proceeding who has not executed this Stipulation and
15 Protective Order as of the time it is presented to the Court for signature may
16 thereafter become a Party to this Stipulation and Protective Order by its counsel's
17 signing and dating a copy thereof and filing the same with the Court, and serving
18 copies of such signed and dated copy upon the other Parties to this Stipulation and
19 Protective Order.

20 12. Any Information that may be produced by a non-Party witness in
21 discovery in the Proceeding pursuant to subpoena or otherwise may be designated
22 by such non-Party as "Confidential" under the terms of this Stipulation and
23 Protective Order, and any such designation by a non-Party shall have the same force
24 and effect, and create the same duties and obligations, as if made by one of the
25 undersigned Parties hereto. Any such designation shall also function as a consent by
26 such producing Party to the authority of the Court in the Proceeding to resolve and
27 conclusively determine any motion or other application made by any person or Party
28 with respect to such designation, or any other matter otherwise arising under this

1 Stipulation and Protective Order.

2 13. If any person subject to this Stipulation and Protective Order who has
3 custody of any Confidential Materials receives a subpoena or other process
4 (“Subpoena”) from any government or other person or entity demanding production
5 of Confidential Materials, the recipient of the Subpoena shall promptly give notice
6 of the same by electronic mail transmission, followed by either express mail or
7 overnight delivery to counsel of record for the Designating Party, and shall furnish
8 such counsel with a copy of the Subpoena. Upon receipt of this notice, the
9 Designating Party may, in its sole discretion and at its own cost, move to quash or
10 limit the Subpoena, otherwise oppose production of the Confidential Materials,
11 and/or seek to obtain confidential treatment of such Confidential Materials from the
12 subpoenaing person or entity to the fullest extent available under law. The recipient
13 of the Subpoena may not produce any Documents, Testimony or Information
14 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

15 14. Nothing in this Stipulation and Protective Order shall be construed to
16 preclude either Party from asserting in good faith that certain Confidential Materials
17 require additional protection. The Parties shall meet and confer to agree upon the
18 terms of such additional protection.

19 15. If, after execution of this Stipulation and Protective Order, any
20 Confidential Materials submitted by a Designating Party under the terms of this
21 Stipulation and Protective Order is Disclosed by a non-Designating Party to any
22 person other than in the manner authorized by this Stipulation and Protective Order,
23 the non-Designating Party responsible for the Disclosure shall bring all pertinent
24 facts relating to the Disclosure of such Confidential Materials to the immediate
25 attention of the Designating Party.

26 16. This Stipulation and Protective Order is entered into without prejudice
27 to the right of any Party to knowingly waive the applicability of this Stipulation and
28 Protective Order to any Confidential Materials designated by that Party. If the

1 Designating Party uses Confidential Materials in a non-Confidential manner, then
2 the Designating Party shall advise that the designation no longer applies.

3 17. Where any Confidential Materials, or Information derived from
4 Confidential Materials, is included in any motion or other proceeding governed by
5 California Rules of Court, Rules 2.550 and 2.551, the party shall follow those rules.
6 With respect to discovery motions or other proceedings not governed by California
7 Rules of Court, Rules 2.550 and 2.551, the following shall apply: If Confidential
8 Materials or Information derived from Confidential Materials are submitted to or
9 otherwise disclosed to the Court in connection with discovery motions and
10 proceedings, the same shall be separately filed under seal with the clerk of the Court
11 in an envelope marked: "CONFIDENTIAL – FILED UNDER SEAL PURSUANT
12 TO PROTECTIVE ORDER AND WITHOUT ANY FURTHER SEALING
13 ORDER REQUIRED." Any Confidential Materials or Information Derived from
14 Confidential Materials that are filed under seal must be done in accordance with the
15 local rules of CDCA and this court's standing order.

16 18. The Parties shall meet and confer regarding the procedures for use of
17 Confidential Materials at trial and shall move the Court for entry of an appropriate
18 order.

19 19. Nothing in this Stipulation and Protective Order shall affect the
20 admissibility into evidence of Confidential Materials, or abridge the rights of any
21 person to seek judicial review or to pursue other appropriate judicial action with
22 respect to any ruling made by the Court concerning the issue of the status of
23 Protected Material.

24 20. This Stipulation and Protective Order shall continue to be binding after
25 the conclusion of this Proceeding and all subsequent proceedings arising from this
26 Proceeding, except that a Party may seek the written permission of the Designating
27 Party or may move the Court for relief from the provisions of this Stipulation and
28 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction

1 to enforce, modify, or reconsider this Stipulation and Protective Order, even after
2 the Proceeding is terminated.

3 21. Upon written request made within thirty (30) days after the settlement
4 or other termination of the Proceeding, the undersigned Parties shall have thirty (30)
5 days to either (a) promptly return to counsel for each Designating Party all
6 Confidential Materials and all copies thereof (except that counsel for each Party may
7 maintain in its files, in continuing compliance with the terms of this Stipulation and
8 Protective Order, all work product, and one copy of each pleading filed with the
9 Court and one copy of each deposition together with the exhibits marked at the
10 deposition), (b) confirm in writing of the destruction of such Confidential Materials.
11 To the extent permitted by law the Court shall retain continuing jurisdiction to
12 review and rule upon the motion referred to in sub-paragraph (c) herein. Counsel for
13 the parties may retain the portions of their respective files that do not constitute
14 Confidential Materials and Information Derived from Confidential Materials.

15 22. After this Stipulation and Protective Order has been signed by counsel
16 for all Parties, it shall be presented to the Court for entry. Counsel agree to be bound
17 by the terms
18 set forth herein with regard to any Confidential Materials that have been produced
19 before the Court signs this Stipulation and Protective Order.

20 23. The Parties and all signatories to the Certification attached hereto as
21 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
22 approval and entry by the Court. In the event that the Court modifies this Stipulation
23 and Protective Order, or in the event that the Court enters a different Protective
24 Order, the Parties agree to be bound by this Stipulation and Protective Order until
25 such time as the Court may enter such a different Order. It is the Parties' intent to be
26 bound by the terms of this Stipulation and Protective Order pending its entry so as to
27 allow for immediate production of Confidential Materials under the terms herein.
28 This Stipulation and Protective Order may be executed in counterparts.

1 DATED: May 29, 2019

MARTIN & BONTRAGER, APC

2
3
4 By: /S/ Nicholas Bontrager

5 G. Thomas Martin

6 Nicholas J. Bontrager

7 Attorneys for Plaintiff M.

PAPADOPOULOS DENTAL CORP. dba

VILLAGE FAMILY DENTAL OFFICE

8 DATED: May 29, 2019

WESIERSKI & ZUREK LLP

9
10
11 By: /S/ Mary H. Kim

12 Christopher P Wesierski

13 Mary H. Kim

14 Attorneys for Defendant, SIGMAGRAFT,

15 INC. dba SIGMAGRAFT

16 BIOMATERIALS

17 **ORDER**

18 GOOD CAUSE APPEARING, the Court hereby approves this Stipulation
19 and Protective Order.

20 IT IS SO ORDERED.

21 DATED: May 31, 2019


22 HONORABLE DOUGLAS F. McCORMICK
23 UNITED STATES MAGISTRATE JUDGE
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6 Attorneys for Defendants,
 SIGMAGRAFT, INC. dba
 7 SIGMAGRAFT BIOMATERIALS

8
 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 SOUTHERN DIVISION

12
 13 M. PAPADOPOULOS DENTAL
 CORP. dba VILLAGE FAMILY
 14 DENTAL OFFICE, individually, and
 on behalf of others similarly situated,

15 Plaintiffs,

16 vs.

17 SIGMAGRAFT, INC. dba
 18 SIGMAGRAFT BIOMATERIALS ,

19 Defendant.

CASE NO. 8:19-cv-232

**CERTIFICATION OF
 CONFIDENTIALITY**

20
 21
 22 I hereby acknowledge that I, _____,

23 _____ [POSITION AND
 24 EMPLOYER], am about to receive Confidential Materials supplied in connection
 25 with the Proceeding, Case No. :19-cv-232. I certify that I understand that the
 26 Confidential Materials are provided to me subject to the terms and restrictions of the
 27 Stipulation and Protective Order filed in this Proceeding. I have been given a copy
 28 of the Stipulation and Protective Order; I have read it, and I agree to be bound by its

1 terms.

2 1. I understand that Confidential Materials, as defined in the Stipulation
3 and Protective Order, including any notes or other records that may be made
4 regarding any such materials, shall not be Disclosed to anyone except as expressly
5 permitted by the Stipulation and Protective Order. I will not copy or use, except
6 solely for the purposes of this Proceeding, any Confidential Materials obtained
7 pursuant to this Protective Order, except as provided therein or otherwise ordered by
8 the Court in the Proceeding.

9 2. I further understand that I am to retain all copies of all Confidential
10 Materials provided to me in the Proceeding in a secure manner, and that all copies of
11 such Confidential Materials are to remain in my personal custody until termination
12 of my participation in this Proceeding, whereupon the copies of such Confidential
13 Materials will be returned to counsel who provided me with such Confidential
14 Materials.

15 3. I hereby agree to submit personally to the jurisdiction of the above
16 Court and I waive all objections I may have concerning the above Court's
17 jurisdiction, including personal jurisdiction, or competence to determine whether the
18 Order has been violated and whether sanctions should be imposed upon me,
19 including contempt of Court, or upon any entity.

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I declare under penalty of perjury, under the laws of the State of California,
that the
foregoing is true and correct. Executed this ____ day of ____, 20__, at
_____.

DATED: _____ BY: _____
Signature _____
Title _____
Address _____
City, State, Zip _____
Telephone Number _____